

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Katherine Matejcek	Team: Squad #7	CCRB Case #: 201705485	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/27/2017 7:30 PM	Location of Incident: 254 Ralph Avenue parking lot	Precinct: 81	18 Mo. SOL 12/27/2018	EO SOL 12/27/2018	
Date/Time CV Reported Tue, 06/27/2017 11:10 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 07/05/2017 12:08 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Colin Kogan	21160	958769	HBK RT
2. SSA Marshall Winston	04109	913724	HBK RT
3. POM Luis Miranda	27474	957772	HBK RT
4. POM Alexander Morales	19469	943584	081 PCT
5. POM Diery Louis	29819	940395	081 PCT
6. An officer			Unknown

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Phillip Correale	16904	957488	HBK RT
2. POM Steven Holguin	19665	958704	HBK RT
3. POM Gary Clemente	18573	958414	HBK RT
4. POM Antonio Antenucci	21211	958258	HBK RT
5. POM William Gunderson	18154	954901	081 PCT
6. POM Kerron Mondesir	31858	955211	QB SSZN
7. POM Ahmed Salameh	17249	959186	HBK RT

Officer(s)	Allegation	Investigator Recommendation
A.POM Diery Louis	Abuse: At Ralph Avenue and Bainbridge Street in Brooklyn, Police Officer Diery Louis stopped the vehicle in which § 87(2)(b) was an occupant.	
B.SSA Marshall Winston	Abuse: At 254 Ralph Avenue in Brooklyn, Sergeant Marshall Winston stopped § 87(2)(b) and individuals.	
C.SSA Marshall Winston	Abuse: At 254 Ralph Avenue in Brooklyn, Sergeant Marshall Winston threatened to seize property belonging to § 87(2)(b) and individuals.	

Officer(s)	Allegation	Investigator Recommendation
D.SSA Marshall Winston	Discourtesy: At 254 Ralph Avenue in Brooklyn, Sergeant Marshall Winston spoke discourteously to § 87(2)(b)	
E.SSA Marshall Winston	Force: At 254 Ralph Avenue in Brooklyn, Sergeant Marshall Winston used physical force against § 87(2)(b)	
F.POM Colin Kogan	Discourtesy: At 254 Ralph Avenue in Brooklyn, Police Officer Colin Kogan spoke discourteously to § 87(2)(b)	
G.POM Luis Miranda	Discourtesy: At 254 Ralph Avenue in Brooklyn, Police Officer Luis Miranda spoke discourteously to § 87(2)(b)	
H. An officer	Force: At 254 Ralph Avenue in Brooklyn, an officer used physical force against § 87(2)(b)	
I.SSA Marshall Winston	Discourtesy: At 254 Ralph Avenue in Brooklyn, Sergeant Marshall Winston gestured discourteously toward § 87(2)(b)	
J.POM Alexander Morales	Abuse: At 254 Ralph Avenue in Brooklyn, Police Officer Alexander Morales threatened § 87(2)(b) with the use of force.	
K.POM Alexander Morales	Abuse: At 254 Ralph Avenue in Brooklyn, Police Officer Alexander Morales refused to provide his shield number to § 87(2)(b)	
L.POM Alexander Morales	Abuse: At 254 Ralph Avenue in Brooklyn, Police Officer Alexander Morales interfered with § 87(2)(b)'s use of a recording device.	
M.POM Alexander Morales	Force: At 254 Ralph Avenue in Brooklyn, Police Officer Alexander Morales used physical force against § 87(2)(b)	
N.POM Colin Kogan	Abuse: At 254 Ralph Avenue in Brooklyn, Police Officer Colin Kogan interfered with § 87(2)(b)'s use of a recording device.	
O.POM Colin Kogan	Discourtesy: At 254 Ralph Avenue in Brooklyn, Police Officer Colin Kogan spoke discourteously to § 87(2)(b)	
P. An officer	Discourtesy: At the PSA 3 stationhouse, an officer spoke discourteously to § 87(2)(b)	

Case Summary

On June 27, 2017, § 87(2)(b) filed this complaint via phone with IAB [01 Board Review]. It was received at the CCRB on July 5, 2017.

At approximately 7:30 p.m. on June 27, 2017, § 87(2)(b) was riding his motorcycle near the intersection of Ralph Avenue and Bainbridge Street in Brooklyn when he was allegedly stopped by PO Diery Louis of the 81st Precinct (**Allegation A: Abuse of Authority**, § 87(2)(g)). Afterwards, § 87(2)(b) continued on his motorcycle to 254 Ralph Avenue, where he met up with a group of approximately eight males, including § 87(2)(b) and others who remain unidentified to the investigation. Sgt. Marshall Winston of the Housing Borough Brooklyn Impact Response Team stopped the males (**Allegation B: Abuse of Authority**, § 87(2)(g)) and allegedly threatened to confiscate their motorcycles (**Allegation C: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) left the scene on his motorcycle, striking and injuring Sgt. Winston and PO Steven Holguin of the Impact Response Team while doing so. Minutes later, he returned to the scene on foot and was arrested for § 87(2)(b).

[02 Board Review].

A crowd of at least 40 civilians, including § 87(2)(b) and § 87(2)(b) formed in the area, and additional units from the Impact Response Team, PSA 3, the 81st Precinct, Strategic Response Group 3, and the Aviation Unit arrived on scene. Sgt. Winston allegedly told § 87(2)(b) to “Back the fuck up” (**Allegation D: Discourtesy**, § 87(2)(g)) and pushed her (**Allegation E: Force**, § 87(2)(g)). PO Colin Kogan of the Impact Response Team allegedly told § 87(2)(b) to “Fuck off” and “Get the fuck out of here” (**Allegation F: Discourtesy**, § 87(2)(g)). PO Luis Miranda of the Impact Response Team told § 87(2)(b) to “Back the fuck up” (**Allegation G: Discourtesy**, § 87(2)(g)). An officer allegedly pushed § 87(2)(b) as he drove away from the scene on his motorcycle (**Allegation H: Force**, § 87(2)(g)).

When § 87(2)(b) returned to the scene, Sgt. Winston allegedly raised his middle finger at him (**Allegation I: Discourtesy**, § 87(2)(g)). PO Alexander Morales of the 81st Precinct threatened § 87(2)(b) with the use of force by making comments such as “Go ahead, do it, I’m here” and “You do all that talking but you don’t do anything” (**Allegation J: Abuse of Authority**, § 87(2)(g)). PO Morales refused to provide his shield number to § 87(2)(b) (**Allegation K: Abuse of Authority**, § 87(2)(g)). PO Morales interfered with § 87(2)(b)’s use of a recording device (**Allegation L: Abuse of Authority**, § 87(2)(g)) and allegedly punched him in the face (**Allegation M: Force**, § 87(2)(g)). PO Kogan interfered with § 87(2)(b)’s use of a recording device (**Allegation N: Abuse of Authority**, § 87(2)(g)) and told him “I’m tired of your shit” (**Allegation O: Discourtesy**, § 87(2)(g)). Following the incident at 254 Ralph Avenue, § 87(2)(b) went to the PSA 3 stationhouse, where an officer allegedly told him to “Get the fuck out” (**Allegation P: Discourtesy**, § 87(2)(g)).

§ 87(2)(g)

Three cell phone recordings of this incident were posted to Facebook and sent to the CCRB by § 87(2)(b). The videos found in Board Review 3 and Board Review 4 were recorded and posted by § 87(2)(b) while the video found in Board Review 5 was recorded and posted by § 87(2)(b).

Allegation A – Abuse of Authority: At Ralph Avenue and Bainbridge Street in Brooklyn, Police Officer Diery Louis stopped the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) testified that he was riding his motorcycle at the intersection of Bainbridge Street and Ralph Avenue in Brooklyn en route to 254 Ralph Avenue shortly before 7:30 p.m. when PO Louis stopped him. § 87(2)(b) denied committing any VTL violations before he was stopped and stated that he was not smoking or drinking anything at the time. His vehicle was in good working order. PO Louis allegedly pulled § 87(2)(b) over and requested his license and registration. When § 87(2)(b) produced the documents, PO Louis looked at them and immediately returned them, stating “You’re the first guy I’ve seen all summer with everything legit.” § 87(2)(b) was not arrested or issued any summonses and continued on to 254 Ralph Avenue without further incident. He did not see or interact with PO Louis’ partner [06 Board Review].

PO Louis testified that, shortly after he began his tour at 3:00 p.m., he was on patrol near Howard Avenue and Chauncey Street in Brooklyn when § 87(2)(b) flagged down his marked vehicle. PO Louis exited his vehicle and approached § 87(2)(b) who was on his motorcycle at the time. § 87(2)(b) told PO Louis that he lost his motorcycle’s registration and asked him how to get a new copy. PO Louis explained the process and left without incident. PO Louis stated that he did not request § 87(2)(b)’s information and never stopped him. PO Louis stated that his partner never exited his vehicle or spoke with § 87(2)(b) during the course of their brief conversation [07 Board Review].

PO William Gunderson of the 81st Precinct, PO Louis’s partner, did not recall whether he and PO Louis stopped someone on a motorcycle on the date in question. He did not recall being flagged down by a civilian and never learned that PO Louis had spoken to a civilian about how to update his vehicle registration. PO Gunderson viewed a photo of § 87(2)(b) but did not recognize him [08 Board Review].

§ 87(2)(g)

Allegation B – Abuse of Authority: At 254 Ralph Avenue in Brooklyn, Sergeant Marshall Winston stopped § 87(2)(b) and individuals.

Allegation C – Abuse of Authority: At 254 Ralph Avenue in Brooklyn, Sergeant Marshall Winston threatened to seize property belonging to § 87(2)(b) and individuals.

After his interaction with PO Louis, § 87(2)(b) drove to NYCHA’s Brevoort Houses and met up with a group of eight males, including § 87(2)(b) and § 87(2)(b). Several members of this group were doing mechanical work on their motorcycles in the parking lot in front of 254 Ralph Avenue. Some of the motorcycles were parked on a sidewalk within the development. Officers from the Impact Response Team approached the males and requested documents to prove that the motorcycles were theirs. This upset the group and they began to argue with officers. Sgt. Winston allegedly instructed the other officers on scene to confiscate the motorcycles. However, the only motorcycle that was ultimately confiscated was the one that belonged to § 87(2)(b) [06 Board Review].

§ 87(2)(b) did not provide a sworn statement for this case [09 Board Review]. During a phone statement, he stated that he and a group of males were doing mechanical work on their motorcycles when officers approached them and requested proof of purchase. § 87(2)(b) showed his information to an officer and the officer told him that he was free to leave. When he tried to do so, Sgt. Winston allegedly stated “Get him, take his bike, and lock him up.” To avoid arrest, § 87(2)(b) drove two blocks away on his motorcycle, parked it, and returned to the scene on foot. His motorcycle was never confiscated [10 Board Review].

§ 87(2)(b) did not provide a sworn statement for this case [09 Board Review]. Like the other civilians, § 87(2)(b) testified that the males were doing mechanical work on their motorcycles when officers first approached them and requested their information. § 87(2)(b) stated that the owner of one of the motorcycles, identified by the investigation as § 87(2)(b) was not present at the time, so the unclaimed motorcycle was confiscated [11 Board Review].

§ 87(2)(b) was unavailable and thus his statement was not obtained [09 Board Review].

Sgt. Winston testified that he was on patrol when he noticed four motorcycles parked in front of 254 Ralph Avenue. Three of the motorcycles were illegally parked in an area where civilian vehicles are not allowed. This area is marked off by large yellow poles and signs indicating that no civilian vehicles are allowed. All NYCHA leases also inform residents of this rule. Sgt. Winston also observed that someone was doing mechanical work on one of the motorcycles, which is also not allowed on NYCHA grounds. Sgt. Winston and his partner, PO Kerron Mondesir of the Impact Response Team, approached the area to investigate further. Since there was a group of approximately 25 people gathered around the motorcycles, Sgt. Winston called for additional officers to respond.

When he got closer to the group, Sgt. Winston noticed that one of the motorcycles also had a partially obscured license plate. Sgt. Winston requested information from the owners of the motorcycles. As he was doing so, § 87(2)(b) got on his motorcycle and struck Sgt. Winston, PO Holguin, and PO Miranda with it before driving away, resulting in injuries to all

three officers. Minutes later, § 87(2)(b) returned to the scene on foot and was placed under arrest, causing a large crowd to form in the vicinity. The motorcycle owners who Sgt. Winston had originally been speaking with started to walk away with their motorcycles. Sgt. Winston stated that, at that time, none of their motorcycles could have been confiscated, as officers were still conducting an investigation. However, some of the motorcycle owners could have been issued summonses. Sgt. Winston told the motorcycle owners to stop and they complied. He then continued to run their information and determine whether the motorcycles were properly registered. Sgt. Winston never mentioned the possibility that any of their motorcycles could be confiscated. Ultimately, only § 87(2)(b)'s motorcycle was confiscated, due to the fact that his ex-girlfriend had purchased it for him and he did not have any information to verify that it was his [12 Board Review].

PO Kogan and PO Miranda were the only other members of service interviewed for this case who were on scene during Sgt. Winston's initial investigative conversation. They both testified that the motorcycles were not parked legally. Neither officer heard Sgt. Winston threaten to confiscate any of the motorcycles [13, 14 Board Review].

A stop may be conducted when a police officer has an individualized, reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime. People v. De Bour, 40 N.Y.2d 210 (1976) [15 Board Review]. According to NYCHA parking rules and regulations, civilians may not do mechanical work on their vehicles in NYCHA parking areas [16 Board Review].

§ 87(2)(g)

§ 87(2)(g)

Allegation D – Discourtesy: At 254 Ralph Avenue in Brooklyn, Sergeant Marshall Winston spoke discourteously to § 87(2)(b)

Allegation E – Force: At 254 Ralph Avenue in Brooklyn, Sergeant Marshall Winston used physical force against § 87(2)(b)

Allegation F – Discourtesy: At 254 Ralph Avenue in Brooklyn, Police Officer Colin Kogan spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated that, once § 87(2)(b) was arrested, a large crowd gathered in the vicinity. § 87(2)(b)'s wife, § 87(2)(b) was concerned that

her husband was uncomfortably hot in the backseat of a parked squad car, so she implored the officers on scene to either crack the windows or turn the air conditioner on. In response, Sgt. Winston allegedly told her to “Back the fuck up” and pushed her chest area. § 87(2)(b) stated that he used profanity toward PO Kogan during this incident. PO Kogan allegedly responded to this by telling him to “Fuck off” and “Get the fuck out of here” [06 Board Review].

§ 87(2)(b) did not provide a sworn statement for this case [09 Board Review]. During a phone statement, she stated that she was “roughed up” by the police but was unwilling to elaborate [17 Board Review].

During a phone statement, § 87(2)(b) stated that he observed the remainder of the incident from the backseat of a patrol car. § 87(2)(b) stated that he was extremely uncomfortable in the vehicle because it was hot outside, the windows were shut, and the air conditioner was not on. He observed § 87(2)(b) attempt to inform an officer of this issue. The officer, described by § 87(2)(b) as a white or Hispanic male in his 20s dressed in plainclothes, allegedly “mushed” § 87(2)(b) in the face and told her to “Get the fuck back.” § 87(2)(b) stated that several officers used profanity during this incident, but could not recall any specific language that was used aside from what was said to § 87(2)(b) [10 Board Review].

During a phone statement, § 87(2)(b) stated that, although he was not on scene for the entirety of the incident, he never saw any officer use profanity or force [11 Board Review].

Sgt. Winston testified that, once § 87(2)(b) was placed under arrest, a crowd of at least 30 civilians gathered in the vicinity. The crowd stood within an arm’s length of the officers while shouting and cursing at them. Officers dealt with this issue by repeatedly instructing civilians to step back and extending their arms to keep them from moving forward. Sgt. Winston stated that, although officers did not push anyone, some of them may have touched civilians with their extended arms as they did this. Sgt. Winston stated that § 87(2)(b) approached almost every officer on scene to ask them where § 87(2)(b)’s cell phone was. When she approached PO Ahmed Salameh of the Impact Response Team, she spat at him. Immediately after doing so, she approached Sgt. Winston and hocked as if she were about to spit at him. Sgt. Winston told her to back up, but had to repeat this three to five times before she stopped moving towards him. She never spit at him. Sgt. Winston stated that he never told her to “Back the fuck up” and never used any other profanity towards her. He never heard any other officer use profanity towards her. Sgt. Winston denied pushing her or making physical contact with her, and never saw any other officer do so. Sgt. Winston never heard any other officer use profanity against any other civilian on scene [12 Board Review].

PO Kogan testified that, once § 87(2)(b) was arrested, there was one female on scene who seemed particularly upset that he was being arrested. PO Kogan did not know if this woman was § 87(2)(b)’s wife. She indicated that she was upset by shouting and cursing at officers. PO Kogan did not see Sgt. Winston push or make physical contact with her or any other civilian on scene. PO Kogan did not recall hearing any officer on scene say “Back the fuck up” or use any other profanity on scene. PO Kogan stated that he did not recall using any profanity against any civilian on scene [13 Board Review].

PO Louis, PO Miranda, and PO Morales were the remaining officers interviewed for this case who were on scene at the time of the alleged misconduct and recalled the incident. They each testified that they did not recall seeing any officer use force against a female on scene or hearing any officer use profanity [07, 14, 18 Board Review].

§ 87(2)(g)

Allegation G – Discourtesy: At 254 Ralph Avenue in Brooklyn, Police Officer Luis Miranda spoke discourteously to § 87(2)(b)

§ 87(2)(b) was unavailable to the investigation and therefore did not provide a statement. [09 Board Review]. None of the civilians reached by the investigation mentioned PO Miranda speaking discourteously to § 87(2)(b)

Video recorded and posted to Facebook by § 87(2)(b) shows PO Miranda telling him to “Back the fuck up” [19 Board Review]. Over a span of 13 seconds, PO Miranda is heard telling § 87(2)(b) to back up at least seven times.



IA 249, 15s.mp4

PO Miranda testified that there was a crowd of at least 40 civilians on scene. Some of the members of the crowd were less than five feet away from the officers and were shouting things like “Get out of our neighborhood” at them. These factors presented a safety concern for PO Miranda, who testified that he dealt with the issue by telling members of the crowd to “Back up.” Initially, PO Miranda did not recall whether he told anyone to “Back the fuck up,” but after reviewing the video, he acknowledged making this statement to § 87(2)(b). PO Miranda explained that § 87(2)(b) was one of the civilians standing within five yards of him and that he told § 87(2)(b) to back up several times. § 87(2)(b) did not make any response to his requests. He stated that he used profanity against § 87(2)(b) in an effort to make him listen to his command [14 Board Review].

Officers must be courteous and respectful in their interactions with the public. Patrol Guide, Procedure 203-09 [20 Board Review]. The use of profanity to gain compliance during stressful encounters is notably different from an officer making a gratuitous disrespectful remark to a member of the public, and thus does not constitute misconduct. Disciplinary Case No. 78667/03 [21 Board Review].

It is undisputed that PO Miranda used profanity against § 87(2)(b) § 87(2)(g)

§ 87(2)(g)

Allegation H – Force: At 254 Ralph Avenue in Brooklyn, an officer used physical force against § 87(2)(b)

As this incident was ongoing, § 87(2)(b) drove his motorcycle out of the parking lot. He alleged that, as he began to drive away, an officer reached out of the crowd and pushed him.

§ 87(2)(b) did not see which officer did this because the crowd was dense and he was moving at the time. He did not sustain any injuries as a result of the push and was able to continue out of the parking lot on his motorcycle afterwards [06 Board Review].



IA 255, 15s.mp4

Video of this incident was recorded and posted to Facebook by § 87(2)(b) [Board Review 22]. This video shows § 87(2)(b) leaving on his motorcycle. Before doing so, he creates a narrow path through a dense crowd of civilians and officers. Shortly after he starts moving, he stops momentarily and his body and bike shift to the left, causing him to place his left foot on the ground to balance. Due to the quality and vantage point of the footage, it was inconclusive as to whether § 87(2)(b) was pushed and by whom. The camera briefly moves to the right to show that a number of uniformed officers are standing in the immediate vicinity. Numerous members of the crowd can then be heard asking the officers why they “pushed him.”

During a phone statement, § 87(2)(b) also alleged that an officer attempted to push § 87(2)(b) off of his motorcycle, which he observed from the backseat of a squad car. § 87(2)(b) stated that the subject of this allegation was a white or Hispanic male in his 20s dressed in plainclothes [10 Board Review].

None of the officers interviewed for this case witnessed the alleged push or admitted to pushing § 87(2)(b). Viewing the video clip attached above did not refresh their recollections of the incident.

§ 87(2)(g)

Allegation I – Discourtesy: At 254 Ralph Avenue in Brooklyn, Sergeant Marshall Winston gestured discourteously toward § 87(2)(b)

§ 87(2)(b) testified that, after leaving the parking lot on his motorcycle, he parked it at a friend's nearby apartment and walked back to 254 Ralph Avenue. On his way there, he encountered Sgt. Winston. § 87(2)(b) began to insult Sgt. Winston. In response, Sgt. Winston allegedly raised his middle finger at § 87(2)(b) [06 Board Review].

Sgt. Winston denied raising his middle finger at § 87(2)(b) or making any other discourteous gestures towards him. He did not recall speaking to § 87(2)(b) at any point during this incident [12 Board Review].

None of the civilian witnesses or other officers on scene witnessed the alleged misconduct or learned of the gesture later.

§ 87(2)(g)

Allegation J – Abuse of Authority: At 254 Ralph Avenue in Brooklyn, Police Officer Alexander Morales threatened § 87(2)(b) with the use of force.

Allegation K – Abuse of Authority: At 254 Ralph Avenue in Brooklyn, Police Officer Alexander Morales refused to provide his shield number to § 87(2)(b)

Allegation L – Abuse of Authority: At 254 Ralph Avenue in Brooklyn, Police Officer Alexander Morales interfered with § 87(2)(b)'s use of a recording device.

Allegation M – Force: At 254 Ralph Avenue in Brooklyn, Police Officer Alexander Morales used physical force against § 87(2)(b)



IA 256, 1min 4s.mp4

Video recorded and posted to Facebook by § 87(2)(b) shows § 87(2)(b) approach PO Morales and use profanity towards him as he enters his marked sedan [Board Review 23]. § 87(2)(b) accuses PO Morales of having pushed him earlier, calls him a “faggot,” and says “If I’d have caught him, I would’ve knocked him the fuck out.” PO Morales exits the vehicle, steps toward § 87(2)(b) and says “Go ahead, do it, I’m here” and “You do all that talking but you don’t do anything.” Another civilian steps between § 87(2)(b) and PO Morales, at which point PO Morales steps a few feet back towards his vehicle. § 87(2)(b) and other civilians continue to make fun of the officer, suggesting that they organize a “fight night.” Moments later, § 87(2)(b) says “Yo, what’s his badge number?” and begins walking closer to PO Morales. PO Morales says “It’s right here” and points to his badge. § 87(2)(b) steps closer and says “Let me make sure I got it,” at which point PO Morales moves his arm forward and prevents § 87(2)(b) from taking a clear recording of his badge by making contact with either his phone or his arm.

As discussed above, § 87(2)(b) was unable to be reached for a statement [09 Board Review].

§ 87(2)(b) stated that he was observing this interaction from a few feet away. § 87(2)(b) asked “What’s his badge number?” and stepped towards PO Morales while holding his cell phone in both hands with his arms fully extended in front of him. § 87(2)(b) testified that § 87(2)(b) never attempted to make physical contact with PO Morales and was not moving towards him in a way that could reasonably have been perceived as threatening. § 87(2)(b) stated that, once § 87(2)(b) stepped closer to PO Morales, PO Morales punched him in the face, causing him to temporarily stop recording the incident [06 Board Review].

Before viewing video from the incident, PO Morales testified that he first interacted with § 87(2)(b) a few minutes after arriving on scene. § 87(2)(b) stepped within a few feet of PO Morales and told PO Morales that he was going to beat him up. In response, PO Morales told § 87(2)(b) that he could do whatever he wanted to. § 87(2)(b) was holding a cell phone and had his right arm extended as if he was recording. He stepped within one foot of PO Morales. This, in combination with the threats that § 87(2)(b) had made previously, caused PO Morales to fear for his safety. No other factors presented a safety concern, and § 87(2)(b) never made physical contact with any officer on scene. PO Morales told § 87(2)(b) to back away but he did not move. In response, PO Morales used his arm to hit § 87(2)(b)’s right forearm. § 87(2)(b) was holding his cell phone in his right hand, but PO Morales’s action never caused him to drop his phone. PO Morales stated that, based on his understanding of the Patrol Guide, officers may prevent civilians from recording an incident if they step too close while “holding something” in their hands. However, PO Morales never suspected that § 87(2)(b) was holding anything other than a cell phone.

PO Morales denied striking § 87(2)(b) or making any physical contact with him apart from hitting his arm. PO Morales stated that § 87(2)(b) never requested his name and shield number and that he never took any action to prevent § 87(2)(b) from obtaining that information. After PO Morales made contact with § 87(2)(b)’s arm, he walked to his vehicle and left the scene without further incident. PO Morales stated that, as far as he knew, § 87(2)(b) never committed an offense for which he could have been arrested.

After reviewing the clip above, PO Morales reiterated that § 87(2)(b) explicitly threatened to “beat him up” at some earlier point in the incident. PO Morales acknowledged that he voluntarily walked within two feet of § 87(2)(b) to make the statements “Go ahead, do it, I’m here” and “You do all that talking but you don’t do anything.” When asked why he made these statements, PO Morales stated that he wanted to inform § 87(2)(b) that he could “do whatever he felt like.” He denied that he intended to provoke a reaction from § 87(2)(b) and stated that § 87(2)(b) never made any physical response to PO Morales’ statements. PO Morales testified that, after § 87(2)(b) said “Yo, what’s his badge number?” he stepped within one foot of PO Morales, which presented a safety concern. He stated that this presented a concern because § 87(2)(b) was holding “something” in his hand while moving towards him. However, PO Morales never suspected that § 87(2)(b) was holding anything other

than a cell phone. PO Morales stated that, between the moment he voluntarily placed himself two feet away from § 87(2)(b) and the moment § 87(2)(b) stepped within one foot of him, § 87(2)(b) did not do anything that presented an additional safety concern. Although PO Morales did not dispute that the video showed § 87(2)(b) requesting his badge number, he stated that, as it was happening, he was focused on the fact that § 87(2)(b) was stepping towards him and therefore did not hear the request [18 Board Review].

A member of the service may use force when it was reasonable to ensure the safety of a member of the service or place a person into custody. Patrol Guide, Procedure 221-01 [27 Board Review]. A member of service shall not use any level of force to punish or retaliate against a subject. Patrol Guide, Procedure 221-02 [24 Board Review]. An officer must courteously and clearly state their rank, name, shield number, and command to anyone who requests it, and provide them ample time to record the information. Patrol Guide, Procedure 203-09 [20 Board Review]. Members of the public are legally allowed to record police interactions as long as they are not interfering with police operations. Intentional interference, such as blocking the camera or ordering the individual to cease recording, violates the First Amendment. NYPD Finest Message #9881632 (2014) [26 Board Review].

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation N – Abuse of Authority: At 254 Ralph Avenue in Brooklyn, Police Officer Colin Kogan interfered with § 87(2)(b)'s use of a recording device.

Allegation O – Discourtesy: At 254 Ralph Avenue in Brooklyn, Police Officer Colin Kogan spoke discourteously to § 87(2)(b)

§ 87(2)(b) testified that he was speaking with an unidentified officer about how to get § 87(2)(b)'s motorcycle back when he saw PO Kogan again. He pointed his camera towards PO Kogan to record him, but PO Kogan reached out his arm in the direction of § 87(2)(b)'s phone and said “I’m tired of your shit” to him [06 Board Review].



IA 257, 10s.mp4



IA 258, 25s.mp4

The first video was recorded and posted to Facebook by § 87(2)(b) [28 Board Review]. The second was recorded and posted to Facebook by § 87(2)(b) [29 Board Review]. These videos, filmed from different angles, show PO Kogan swat at § 87(2)(b)'s cell

§ 87(2)(g)

§ 87(2)(g)

Allegation P – Discourtesy: At the PSA 3 stationhouse, an officer spoke discourteously to

§ 87(2)(b)

§ 87(2)(b) testified that, immediately following this incident, he went to the PSA 3 stationhouse in an effort to get § 87(2)(b)'s motorcycle back. When he presented his identification to the officer at the desk, the officer told him to “Get the fuck out of here, you tried to run my officer over with a motorcycle.” § 87(2)(b) described this officer as a Hispanic male with light skin, a slightly stocky build, with black hair in his 30s. He was 5’5” tall, wearing a navy blue uniform, and had no tattoos, glasses, or facial hair. § 87(2)(b) immediately left the stationhouse because he was scared that he might be arrested [06 Board Review].

Sgt. Bryan Miccio of PSA 3 was working as the desk sergeant from 3:05 p.m. until 11:10 p.m. on the date in question. Sgt. Miccio is a § 87(2)(b)-old white male with black hair and brown eyes. He is 5’9” tall and weighs 190 pounds. He was dressed in uniform at the time of the incident. Sgt. Miccio did not recognize a photo of § 87(2)(b) and stated that no civilian ever came to the PSA 3 stationhouse that night to check on the status of a motorcycle. Sgt. Miccio denied telling any civilian to “Get the fuck out” or using any other profanity against a civilian. He stated that, although Impact Response Team officers sometimes bring arrestees to the PSA 3 stationhouse, they would rarely be in a position where they would be speaking with members of the public. Sgt. Miccio testified that he went on meal from 8:05 p.m. until 9:05 p.m. that evening. During that time, Sgt. Deshon Grantham of PSA 3 took over as the desk sergeant. However, Sgt. Grantham never informed Sgt. Miccio that any sort of dispute had occurred at the stationhouse or that any civilian had visited to inquire about the status of a confiscated motorcycle [30 Board Review].

Sgt. Grantham is a § 87(2)(b)-old black male with dark skin. He is 5’11” tall, weighs 185 pounds, and is bald. § 87(2)(g)

Although PO Kogan returned to the PSA 3 stationhouse following this incident, he never learned that § 87(2)(b) went to the stationhouse or that any officer used profanity against him there. PO Kogan testified that Impact Response Team officers turn out of the PSA 3 stationhouse, but the desk officer at PSA 3 would be interacting with the public, not Impact Response Team officers, who would be working on the second floor of the stationhouse [13 Board Review].

PO Miranda and Sgt. Winston both returned to the PSA 3 stationhouse following this incident. Like PO Kogan, neither officer saw § 87(2)(b) there or learned that he had visited and never heard or learned that an officer had used profanity against him there [14, 12 Board Review].

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- The number of subject officers involved in this case rendered it unsuitable for mediation.
- As of November 15, 2017, no Notice of Claim was filed for this incident [31 Board Review].

- § 87(2)(b)
[REDACTED]
- § 87(2)(b)
[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) § 87(2)(b)
[REDACTED]
- PO Louis has been a member of the NYPD for 11 years. This is the 28th CCRB complaint filed against him, and he has 64 prior allegations on his record. In #200615761, a vehicle stop was pleaded against him but was closed as complainant uncooperative. PO Louis has one substantiated allegation on his record, a discourtesy in #201303865, but was found not guilty in an APU trial and faced no penalty. § 87(2)(g)
[REDACTED]
- Sgt. Winston has been a member of the NYPD for 27 years. This is the 21st CCRB complaint filed against him, and he has 44 prior allegations on his record. 11 cases include verbal discourtesy allegations, one of which (#201606819) was substantiated. His record also includes one discourteous action allegation, six force allegations, and one stop allegation, none of which were substantiated. Sgt. Winston has two substantiated allegations on his record, both from #201606819: the verbal discourtesy mentioned above and a search. Command Discipline A was recommended for both allegations, and the NYPD's disposition has not yet been entered.
- PO Kogan has been a member of the NYPD for two years. This is the first CCRB complaint filed against him.

- PO Miranda has been a member of the NYPD for two years. This is the second CCRB complaint filed against him, and he has no substantiated or similar allegations on his record.
- PO Morales has been a member of the NYPD for 10 years. This is the second CCRB complaint filed against him, and he has no substantiated or similar allegations on his record.

Squad No.: 7

Investigator:	_____	<u>Inv. Katherine Matejcak</u>	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	<u>IM Diana Townsend</u>	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date